

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

UNITED STATES OF AMERICA,

v.

JOSE MACIA-SANCHEZ,

Defendant.

CRIMINAL FILE NO.

1:10-CR-529-TWT

ORDER

This is a criminal action in which the Defendant was charged with and plead guilty to illegally reentering the United States. It is before the Court on the Report and Recommendation [Doc. 47] of the Magistrate Judge recommending dismissing the Defendant's Motion to Vacate Sentence [Doc. 39]. The Defendant alleges that his attorney provided ineffective assistance of counsel with respect to the calculation of his sentencing guidelines. As set forth in the thorough and well-reasoned Report and Recommendation, the Court correctly calculated the guidelines and additional objections by defense counsel would have been futile. The Defendant's main argument is that he should not have been given a 16 point enhancement for having a prior drug trafficking conviction. According to the Presentence Report, the Defendant was convicted in California in 1999 of manufacturing methamphetamine. He argues

that a conviction under California Health and Safety Code §11379(a) could be supported by a non-trafficking offense. But it appears that he was convicted under §1179.6(a) because he received a sentence of 5 years to serve. Section 1179.6(a) explicitly governs the manufacture of controlled substances. The Defendant's Objections to the Report and Recommendation are without merit. The Court approves and adopts the Report and Recommendation as the judgment of the Court. The Defendant's Motion to Vacate Sentence [Doc. 39] is DENIED.

SO ORDERED, this 31 day of August, 2012.

/s/Thomas W. Thrash
THOMAS W. THRASH, JR.
United States District Judge